

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

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**Reassignment of Schedules at  
Newark-Liberty International Airport**

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) Docket DOT-OST-2021-0103  
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**COMMENTS OF UNITED AIRLINES, INC.**

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## COMMENTS OF UNITED AIRLINES, INC.

United Airlines, Inc. (“United”) offers these comments to the Notice on Reassignment of Schedules (“Notice”) at Newark-Liberty International Airport (“EWR”) issued by the Department of Transportation (“Department”). The Department will proceed with its reassignment of the 16 peak-hour “timings” (“movements”) vacated by Southwest Airlines, Inc. in 2019 to Low Cost Carriers (“LCCs”) and Ultra Low Cost Carriers (“ULCCs”) in accordance with a process and criteria established in the Notice. United continues to have concerns about the potential adverse consequences of the reassignment on congestion and delay at EWR. Nonetheless, United reiterates its long-standing commitment to work with the Department and Federal Aviation Administration (“FAA”) to mitigate delay in the New York City airspace, consistent with the recognition that EWR is a hub airport essential to United’s worldwide operations and relied upon by millions of its customers to connect them to domestic and international destinations.

United will continue to work with the Department to mitigate congestion in the NYC airspace.

As detailed in its comments to the preliminary Notice, United has always worked closely with FAA on scheduling, as evidenced by its voluntary “smoothing” of operations across peak hours, and it reaffirms its commitment to congestion mitigation collaboration going forward despite its ongoing concerns. Given its hub-operator status, United’s customers are more affected by delays at EWR than customers travelling on other carriers. Customers deserve a well-functioning airport experience, and that is United’s primary objective in raising these concerns.

United appreciates that the Department is “not asking United to reduce its access to Newark to accommodate the reassignment.” As a mathematical matter, however, United notes that it will be very difficult for FAA to add 16 peak-hour movements over the day while maintaining the hourly cap of 79 operations.<sup>1</sup> If FAA raises the cap, delays will increase. As we have noted previously, during the summer of 2019, more than one-fifth of EWR operations were significantly impacted by ground delay programs on 60 days of the roughly 90 days of summer, two-thirds of which were “blue sky” days (*i.e.*, days without the effects of adverse weather).<sup>2</sup> The Department appears to be signaling that some additional delays at EWR may be acceptable in order to achieve its competition objectives at the airport. While more delays may now be acceptable to the Department in the abstract, United cautions that it may be difficult for passengers to accept in practice, particularly as air travel recovers. Accordingly, while United is committed to voluntarily working with FAA to identify ways to mitigate delays at EWR, as a practical matter, the operational implementation by the FAA will be more consequential than the Department’s decision to reassign the 16 movements. United asks that the FAA continue to recognize its unique role and requirements at EWR, and the effects on congestion and delay, when adding the

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<sup>1</sup> FAA reduced the peak-hour cap at EWR from 81 to 79 operations following re-designation of EWR to a Level 2 airport effective with the Winter 2016/2017 scheduling season. See FAA, *Notice of Submission Deadline*, 84 Fed. Reg. 52580 at fn. 5 (10/03/2019).

<sup>2</sup> See Comments of United Airlines, Inc., Exhibit B (September 27, 2021).

reassigned movements. For the benefit of all those who depend on a reliably functioning EWR, this urgent consideration must be addressed in tandem with the reassignment proceeding, not as a secondary matter.

*The reassignment has implications that the Notice does not address or resolve.*

While United remains committed to working with the Department and the FAA to improve air-traffic reliability in the New York/Newark metropolitan region, it fundamentally disputes a number of the assumptions on which the Notice is grounded and finds the Notice leaves important concerns unaddressed or inadequately resolved. The Department stated that reassigning the movements is uniquely necessary in order to “restore” a competition remedy stemming from the 2010 merger of United and Continental Airlines, Inc. However, 12 years have passed since the merger and EWR, like many other airports around the world, functions in a very different operating and competitive environment than it did in 2010. United has presented evidence of significant competitive changes through 2019 to substantiate the facts surrounding this new environment. The Department insists that it had “no alternative means” to restore the 2010 competition remedy other than to reassign the movements. This is incorrect and does not reflect adequate consideration of the facts and concerns United has consistently raised.

In order to bolster its decision to restore the remedy, the Department relies on operational data that ignores United’s position at EWR because it does not take into account United’s reliance on EWR as an international hub airport for connecting passengers, nor the unique consumer benefits provided by EWR’s hub status. Additionally, the Department’s assumption that EWR serves a separate market from the competitive NYC-area market served by LaGuardia Airport and John F. Kennedy International Airport distorts its analysis. The Department ignores the fact that all passengers do not need to consider the three NYC-area airports perfect substitutes for one another in order for airlines serving them to be in direct competition because no airline can ignore the many customers that do consider them reasonable substitutes. As such, all customers benefit from the resulting competition among the NYC-area airports. Accordingly, because United’s operations at EWR were apparently considered without regard to the requirements of a carrier with a hub-and-spoke network and without regard to the reality that the NYC area is a single market served by a highly-competitive multi-airport system (and without reference to the considerable volume of comments and econometric analysis submitted by United on those key points), the Department’s decision was cursory, conclusory, and does not reflect reasoned analysis of a number of the key considerations raised in this proceeding. There is no support, cited in the record or explained elsewhere, for the Department’s conclusion that the potential benefits of lower fares significantly outweigh the impacts of additional delays, particularly at the airport already saddled with the worst record of on-time performance in the United States.

Yet, United does not maintain that a weighing exercise is necessary and appropriate in this proceeding. United’s views on the *Spirit v. FAA* case are fully set forth in its previously filed comments. However, because the Department cited portions of the *Spirit* decision in its Notice and attributed positions to United by implication, United believes it necessary to point out what it did and did not say. United did say that the *Spirit* Court made unsubstantiated conclusions about the effects of the reassignment. Specifically, without analysis or expertise in airspace management, and accepting at face value a conclusory allegation not substantiated by the FAA or the record, the Court overestimated the likely competitive effects of the reassignment (e.g., that it would lower

fares on some routes as much 45 percent) and underestimated resulting delays (“minuscule” and “an average of one minute”). Importantly, United did not comment that the reassignment should only proceed “if updated modeling indicates that the consumer benefits of additional competition would outweigh the costs of additional delay.” Rather, United’s position was, and is, that the effects of the reassignment on delay at EWR must be understood and considered as part of the Department’s decision.

FAA will have to operationalize the decision at today’s competitive, tightly scheduled EWR in a future scheduling process, and United continues to urge both FAA and the Department to consider the potential delay effects in light of the public benefits and strategic importance of EWR as an international hub. United does not argue that competition and delay should be formulaically weighed one against the other, but that both should be considered, and an appropriate resolution should be achieved, when the Department makes competition-driven decisions that could cause the FAA and airlines to have to manage – and their customers to endure – additional congestion, cancellations, and delays at a key hub airport.